

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

FIRST CHOICE FEDERAL CREDIT UNION,
AOD FEDERAL CREDIT UNION, TECH
CREDIT UNION, VERIDIAN CREDIT
UNION, SOUTH FLORIDA EDUCATIONAL
FEDERAL CREDIT UNION, PREFERRED
CREDIT UNION, ALCOA COMMUNITY
FEDERAL CREDIT UNION, ASSOCIATED
CREDIT UNION, CENTRUE BANK,
ENVISTA CREDIT UNION, FIRST NBC
BANK, NAVIGATOR CREDIT UNION, THE
SEYMOUR BANK, FINANCIAL HORIZONS
CREDIT UNION, NUSENDA CREDIT
UNION, GREATER CINCINNATI CREDIT
UNION, KEMBA FINANCIAL CREDIT
UNION, WRIGHT-PATT CREDIT UNION, and
MEMBERS CHOICE CREDIT UNION, on
Behalf of Themselves and All Others Similarly
Situating, and

CREDIT UNION NATIONAL ASSOCIATION,
GEORGIA CREDIT UNION AFFILIATES,
INDIANA CREDIT UNION LEAGUE,
MICHIGAN CREDIT UNION LEAGUE, and
OHIO CREDIT UNION LEAGUE,

Plaintiff,

v.

THE WENDY'S COMPANY, WENDY'S
RESTAURANTS, LLC, and WENDY'S
INTERNATIONAL, LLC,

Defendant.

Civil No. 2:16-cv-00506-NBF-MPK

**DECLARATION OF CHRISTOPHER
D. AMUNDSON IN SUPPORT OF
PLAINTIFFS' MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

1 I, Christopher D. Amundson, declare as follows:

2 1. I am a Project Manager at Analytics Consulting LLC (“Analytics”), a firm with
3 offices in Chanhassen, Minnesota that provides consulting services relating to the design and
4 implementation of class action and mass tort litigation settlements and notice programs. I am
5 responsible for Analytics’ consulting services, including the implementation of the Notice
6 Program in this matter. The following statements are based on my personal knowledge and
7 information provided to me in the regular course of business by other Analytics employees
8 working under my supervision. If called as a witness, I would testify as follows:

9 2. Pursuant to its Preliminary Approval Order dated February 26, 2019 (ECF No.
10 183), Analytics was appointed to serve as the Settlement Administrator with responsibility for
11 Claims Administration, the Notice Program, and all other obligations of the Settlement
12 Administrator as set forth in the Settlement.¹ I submit this Declaration in order to provide the
13 Court and the parties to the Settlement with information regarding the provision of the Court-
14 approved Notice Program, the mailing of notice in compliance with Class Action Fairness Act
15 (“CAFA”), 28 U.S.C. §1715(b) (“CAFA Notice”), and Claims Administration in accordance
16 with the Settlement Agreement.

17 3. In compliance with CAFA, CAFA Notice relating to the above captioned case
18 was timely served and sent to all appropriate authorities on February 14, 2019. A copy of the
19 CAFA Notice sent is attached here as **Exhibit A**.

20 4. Analytics was responsible for providing notice to Settlement Class Members.
21 Specifically, pursuant to the Preliminary Approval Order, the Notice was to be mailed by first
22 class mail, postage prepaid, to the last known address of each Settlement Class Member identified
23 through records obtained by Class Counsel through discovery conducted of third parties.
24

25 _____
26 ¹ All terms with initial capitalization not otherwise defined in this declaration shall have the
27 meanings ascribed to them in the Settlement Agreement and Release dated February 12, 2019
(ECF No. 176-1) (the “Settlement”).

1 Because of the nature of the Settlement Class and the third-party discovery obtained by Class
2 Counsel, the identity of and last known address for each Settlement Class Member was available
3 to Analytics.

4 5. Analytics received from Class Counsel files containing names and addresses of
5 Financial Institutions determined through third-party discovery that was conducted during the
6 course of the litigation to be members of the Settlement Class. The data was consolidated and
7 de-duplicated and ingested into a single database, and was updated using the National Change of
8 Address (“NCOA”) database maintained by the United States Postal Service (“USPS”);² certified
9 via the Coding Accuracy Support System (“CASS”);³ and verified through Delivery Point
10 Validation (“DPV”).⁴ This resulted in mailable address records for 5,168 Settlement Class
11 Members.

12 6. Analytics formatted the Notice and Claim Form and caused them to be printed,
13 personalized with the name and address of each Settlement Class Member, posted for first-class
14 mail, postage pre-paid, and delivered on March 28, 2019 to the United States Postal Service
15 (“USPS”) for mailing. Copies of the Notice and Claim Form are attached here as **Exhibit B**.

16 7. As of the date of this Declaration, the USPS has returned 12 Notices with an
17 updated address for the Settlement Class Member (the period in which the USPS automatically
18 forwards the notice had expired). Analytics re-mailed the Notices to these Settlement Class
19 Members at their updated addresses. An additional 269 Notices were returned by the USPS as
20 undeliverable. Of these undeliverable Notices, Analytics located 14 new addresses through a
21

22 ² The NCOA database contains records of all permanent change of address submissions received
23 by the USPS for the last four years. The USPS makes this data available to mailing firms, and
24 lists submitted to it are automatically updated with any reported move based on a comparison
with the person’s name and last known address.

25 ³ Coding Accuracy Support System is a certification system used by the USPS to ensure the
quality of ZIP + 4 coding systems.

26 ⁴ Records that are ZIP + 4 coded are then sent through Delivery Point Validation to verify the
27 address and identify Commercial Mail Receiving Agencies. DPV verifies the accuracy of
addresses, and reports exactly what is wrong with incorrect addresses.

1 third-party commercial data source, Experian. Analytics re-mailed the Notices to those 14
2 Settlement Class Members at these updated addresses. Analytics estimates that Notice was
3 successfully delivered to over 95% of the Class.

4 8. In addition to the mailed notice, published notice in the form of the court approved
5 Short Form Notice appeared in the ABA Banking Journal Digital Edition on March 27, 2019.
6 The published notice ran for a period of 30 consecutive days, ending on April 26, 2019. A screen
7 shot of the published notice is attached here as **Exhibit C**.

8 9. Analytics established and is maintaining a toll-free phone number (1-888-256-
9 6490) for the Settlement to provide Settlement Class Members with additional information
10 regarding the Settlement. Automated messages were and continue to be available to Settlement
11 Class Members 24-hours a day, 7-days a week, with live call center representatives (agents)
12 available during standard business hours. The toll-free number became operational on March
13 28, 2019. As of the date of this Declaration, Analytics has received a total of 268 telephone calls
14 and 80 Settlement Class Members requested to speak with a customer service representative for
15 assistance, all of whom have been responded to in a timely manner.

16 10. Prior to mailing the Notice of Class Action Settlement, Analytics consulted with
17 counsel for the parties to develop a format for the settlement website. The website address was
18 cited in all published notice materials as www.WendysFIDataBreachSettlement.com. The
19 website became live on March 27, 2019. By visiting the settlement website, Class Members were
20 able to read and download key information about the settlement and submit Claim Forms
21 electronically. As of the date of this Declaration, the website has received 9120 page views from
22 2240 unique users.

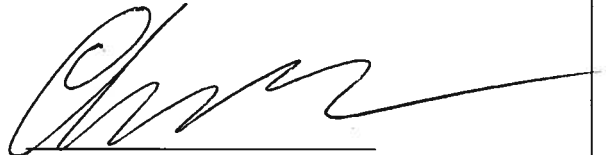
23 11. In support of the Settlement Class Members, an e-mail address was designated
24 and listed on the website as info@WendysFIDataBreachSettlement.com. As of the date of this
25 Declaration, Settlement Class Members submitted 246 questions via e-mail, all of which were
26 promptly responded to and resolved.
27

1 12. The Court-approved Notice Program provided for a follow up reminder to be sent to
2 Settlement Class Members who had not submitted Claim Forms early in the Claims Period.
3 Analytics worked with Class Counsel to establish the attached Reminder Postcard attached here
4 as **Exhibit D**. On July 17, 2019, Analytics caused Reminder Postcards to be mailed to 4,293
5 Settlement Class Members who had not submitted a Claim Form at that point.

6 13. The Settlement Agreement provides that Settlement Class Members may submit
7 via the website or by mail a completed Claim Form in order to seek a monetary settlement
8 payment by September 30, 2019. As of the date of this Declaration, Analytics has received 1,389
9 completed Claim Forms. This is a claims rate of 26.8%, which in Analytics' experience is an
10 excellent response rate.

11 14. The Settlement Agreement provides Settlement Class Members the option to
12 request exclusion from the Settlement by May 28, 2019. As of the date of this Declaration,
13 Analytics has received a total of 1 timely Request for Exclusion, which is attached here as
14 **Exhibit E**.

15 15. I declare under penalty of perjury under the laws of the United States that the
16 foregoing is true and correct. Executed this 1st day of October 2019 in Minneapolis,
17 Minnesota.

18 
19

20 Christopher D. Amundson
21 Project Manager – Analytics LLC
22
23
24
25
26
27

EXHIBIT A

ALSTON & BIRD

One Atlantic Center
1201 West Peachtree Street
Atlanta, GA 30309-3424
404-881-7000 | Fax: 404-881-7777

Donald Houser

Direct Dial: 404-881-4749

Email: donald.houser@alston.com

ALABAMA ATTORNEY GENERAL
STEVE MARSHALL
501 WASHINGTON AVE
PO BOX 300152
MONTGOMERY, AL 36130-0152

February 14, 2019

VIA OVERNIGHT DELIVERY

Re: **Notice of Class Action Settlement**

First Choice Federal Credit Union et al. v. The Wendy's Company et al. Case No. 2:16-cv-506-NBF-MPK (W.D. Pa.)

Dear Counsel or Official:

Analytics Consulting, LLC ("Analytics"), an independent claims administrator, on behalf of The Wendy's Company, Wendy's Restaurants, LLC, and Wendy's International, LLC (collectively, "Wendy's"), defendants in the below-described action, hereby provides your office with this notice under the provisions of the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715, to advise you of the proposed class action settlement in the below-described action:

Case Name: *First Choice Federal Credit Union v. The Wendy's Company*

Index Number: Case No. 2:16-cv-506-NBF-MPK

Jurisdiction: United States District Court for the Western District of Pennsylvania.

Date Settlement Filed with Court: February 13, 2019

A settlement has been proposed to resolve lawsuits against Wendy's brought by financial institutions and associations as a result of third-party criminal cyberattacks of certain of Wendy's independently owned and operated franchisee restaurants involving malware variants targeting customers' payment card information that Wendy's reported in 2016 (the "Data Breach"). In the operative complaint, Plaintiffs allege that Wendy's is liable for the Data Breach and assert claims for negligence, negligence *per se*, violation of the Ohio Deceptive Trade Practices Act, as well as for declaratory and injunctive relief.

Alston & Bird LLP

www.alston.com

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The complaint seeks to recover as damages the expense of reissuing cards, amounts paid to cover fraudulent charges, and other costs incurred responding to the Data Breach, in addition to seeking declaratory and injunctive relief.

Wendy's denies any wrongdoing or liability whatsoever, but has decided to settle this action solely in order to eliminate the burden, expense, and uncertainties of further litigation. This settlement is separate and distinct from the previous settlement between Wendy's and consumers stemming from the same criminal Data Breach.

In accordance with the requirements of 28 U.S.C. § 1715, please find copies of the following documents associated with this action on the enclosed CD-ROM:

1. **28 U.S.C. § 1715(b)(1)-Complaint:** Included on the enclosed CD-ROM, please find a copy of the operative Consolidated Amended Class Action Complaint, filed with the Court on July 22, 2016, in *First Choice Federal Credit Union et al. v. The Wendy's Company et al.*, Case No. 2:16-cv-506-NBF-MPK (W.D. Pa.). Also enclosed is operative complaint and Wendy's answer thereto. All of these documents are also available through PACER.
2. **28 U.S.C. § 1715(b)(2)-Notice of Any Scheduled Judicial Hearings:** As of the date of this Notice, the Court has not yet scheduled any hearing in this matter. Copies of the motion for preliminary approval of the settlement (and attachment) and other filings related to the proposed settlement are included on the enclosed CD.
3. **28 U.S.C. § 1715(b)(3)-Notification to Class Members:** Copies of the Long Form Notice, Publication Notice, and Claim Form, filed with the Court on February 13, 2019, are included on the enclosed CD-ROM. These notices, along with the settlement, provide Settlement Class Members with information regarding requests for exclusion, among other information.
4. **28 U.S.C. § 1715(b)(4)-Class Action Settlement Agreement:** A copy of the settlement and exhibits thereto, filed with the Court on February 13, 2019, is included on the enclosed CD-ROM.
5. **28 U.S.C. § 1715(b)(5)-Any Settlement or Other Agreements:** Class Counsel and Wendy's entered into an agreement pursuant to which Wendy's shall be entitled to terminate the settlement in the event Settlement Class Members representing certain number Alerted on Payment Cards elect to opt out. The terms of that agreement are confidential and, if requested by the Court, will be submitted to the Court for *in camera* review. The parties have also reached a confidential agreement re the scope of public statements concerning the settlement, which will be submitted to the Court for *in camera* review if requested.

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Page 3

6. **28 U.S.C. § 1715(b)(6)-Final Judgment:** As of the time of the filing of this CAFA Notice, no Final Judgment or notice of dismissal has been entered in this case. Included with the enclosed materials is the *proposed* final judgment.
7. **28 U.S.C. § 1715(b)(7)(B)-Estimate of Class Members:** It is not feasible for Wendy's to provide all the names of class members who reside in each State or the estimated proportionate share of the claims of such members. Wendy's provides a reasonable estimate of the universe of potential class members residing in each State, and the estimated proportionate share of the claims of such members to the entire settlement. Wendy's believes that this estimate is over inclusive of the number of actual class members in each State but is providing the larger number out of an abundance of caution (see the enclosed State Breakdown).
8. **28 U.S.C. §1715(b)(8): Judicial Opinions Related to the Settlement:** A copy of the [proposed] Preliminary Approval Order and [proposed] Final Approval Order and Judgment, filed with the Court on February 13, 2019, is included on the enclosed CD-ROM. Also included is the Court's order approving consent to proceed before the magistrate judge for purposes of settlement.

If you have questions or concerns about this notice, the proposed settlement, or the enclosed materials, or if you did not receive any of the above-listed materials, please contact this office at (404) 881-4749 or donald.houser@alston.com.

Sincerely,

ALSTON & BIRD LLP

Donald Houser

Enclosure

EXHIBIT B

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

If your financial institution issued one or more payment cards that was identified as having been at risk as a result of the data breach that Wendy's announced in 2016, it could get a payment from a class action settlement.

A federal court authorized this notice. This is not a solicitation from a lawyer.

- A settlement has been proposed to resolve lawsuits against The Wendy's Company, Wendy's Restaurants, LLC, and Wendy's International, LLC ("Wendy's") brought by financial institutions and associations as a result of third-party criminal cyberattacks of certain of Wendy's independently owned and operated franchisee restaurants involving malware variants targeting customers' payment card information that Wendy's reported in 2016 (the "Data Breach").
- The lawsuits, referred to collectively as *First Choice Federal Credit Union v. The Wendy's Company*, Case No. 2:16-cv-00506-NBF-MPK (W.D. Pa.), allege that Wendy's is legally responsible for the Data Breach and assert claims for negligence, negligence per se, violation of the Ohio Deceptive Trade Practices Act, as well as for declaratory and injunctive relief. Wendy's denies these allegations and says it did not do anything wrong.
- Under the Settlement, Wendy's will pay \$50 million into a Settlement Fund to be distributed to Settlement Class Members who timely submit valid claims. All Settlement Class Members are eligible to receive a cash payment for each payment card that was identified as having been at risk as a result of the Data Breach in an alert or similar document by Visa, MasterCard, Discover, American Express, or JCB, without providing any documentation of their losses. The amount of the cash payment will depend on the total number of eligible payment cards submitted by Settlement Class Members, the Costs of Settlement Administration, taxes paid on the Settlement Fund, and the amount of attorneys' fees, costs, and expenses, and Service Awards approved by the Court. By way of example, if valid claims are submitted for all eligible cards, it is estimated that Settlement Class Members would receive approximately \$2.00 per eligible payment card. If, for example, 40% of eligible payment cards are submitted, then Settlement Class Members would receive approximately \$4.80 per eligible payment card. These are examples. The per-card amount actually paid may be higher or lower.
- In addition, Wendy's has agreed to adopt and/or maintain certain practices related to its data security. If approved by the Court, reasonable attorneys' fees, costs, and expenses will be paid out of the Settlement Fund. In addition, if approved by the Court, Service Awards of \$7,500 to each class representative that sat for a deposition and \$2,500 to the remaining class representatives will be paid out of the Settlement Fund. Costs of Settlement Administration and any taxes on the Settlement Fund will also be paid out of the Settlement Fund.

Your financial institution's legal rights are affected whether you act or don't act. Read this notice carefully.

SUBMIT A CLAIM FORM	If eligible, your financial institution will receive a cash payment. This is the only way to get compensation from the Settlement.
EXCLUDE YOUR FINANCIAL INSTITUTION	If you ask to be excluded, you will not receive a cash payment, but you may be able to file your own lawsuit against Wendy's and its franchisees for the same claims. This is the only option that leaves your financial institution the right to file its own lawsuit against Wendy's, its franchisees, and/or Defendants' Released Persons (defined in Settlement) for the claims that are being resolved by the Settlement. In order to be effective, a request to be excluded from the Settlement must include all information required by the Settlement.
OBJECT	Your financial institution can remain in the Settlement Class and file an objection telling the Court why you do not like the Settlement. If your objections are overruled, your financial institution will be bound by the Settlement.
DO NOTHING	If you do nothing, you will not receive any cash payment. If you do nothing, you will also forfeit your right to sue or bring any claim against Wendy's, its franchisees, and/or Defendants' Released Persons (defined in Settlement) related to the Data Breach.

- These rights and options—and the deadlines to exercise them—are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. Payments will be made if the Court approves the Settlement and after any appeals are resolved. Please be patient.

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BASIC INFORMATION

1. Why did my financial institution get this notice package?

Your financial institution may have issued payment cards identified in one of the alerts (or a similar document) sent out by the card brands (Visa, MasterCard, American Express, Discover, or JCB) related to the Data Breach.

The Court authorized this notice because you have a right to know about your financial institution's rights under a proposed class action settlement before the Court decides whether to approve the Settlement. If the Court approves the Settlement, and after objections and appeals are resolved, a settlement administrator appointed by the Court will make the cash payments that the Settlement allows.

This package explains the lawsuits, the Settlement, your financial institution's rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of the case is the United States District Court for the Western District of Pennsylvania, and the case is known as *First Choice Federal Credit Union v. The Wendy's Company*, Case No. 2:16-cv-00506-NBF-MPK (W.D. Pa.). The financial institutions and associations who sued are called "Plaintiffs," and the company they sued, Wendy's, is the "Defendant."

2. What is this lawsuit about?

The lawsuits, referred to collectively as *First Choice Federal Credit Union v. The Wendy's Company*, Case No. 2:16-cv-00506-NBF-MPK (W.D. Pa.), allege that Wendy's is legally responsible for the Data Breach and assert claims for negligence, negligence per se, violation of the Ohio Deceptive Trade Practices Act, as well as for declaratory and injunctive relief. The financial institutions seek to recover damages in the lawsuits for the expense of payment card reissuance, amounts paid to cover fraudulent payment card charges, and other costs allegedly incurred as a result of the Data Breach. Wendy's denies any wrongdoing.

3. Why is this a class action?

In a class action, one or more entities called "class representatives" sue on behalf of themselves and other entities with similar claims. All of these entities together are the "class" or "class members." One court resolves the issues for all class members, except for those who exclude themselves from the settlement class.

4. Why is there a settlement?

The Court has not decided in favor of Plaintiffs or Wendy's. Instead, both sides, with the assistance of a mediator, agreed to the Settlement. The Settlement is not an admission that Wendy's did something wrong, but rather a compromise to end the lawsuits. By agreeing to settle, both sides avoid the costs, risks, and uncertainties of a trial and related appeals, while providing benefits to members of the Settlement Class. The Settlement Class Representatives and the attorneys for the Settlement Class think the Settlement is best for all class members.

WHO IS PART OF THE SETTLEMENT

5. How does a financial institution know if it is part of the settlement?

Your financial institution is a member of the Settlement Class and affected by the Settlement if:

- It is a financial institution, bank, credit union, or other entity in the United States (including its Territories and the District of Columbia); and
- It issued one or more payment cards (including debit and credit cards) that was identified as having been at risk as a result of the Data Breach in an alert or similar document by Visa, MasterCard, Discover, American Express, or JCB, including without limitation: (i) in an alert in the Visa US-2016-0183-PA series (e.g., US-2016-0183a-PA, US-2016-0183b-PA, US-2016-0183c-PA, US-2016-0183d-PA, US-2016-0183e-PA, US-2016-0183f-PA, US-2016-0183g-PA, US-2016-0183h-PA, US-2016-0183i-PA, US-2016-0183j-PA, US-2016-0183k-PA, US-2016-0183l-PA, US-2016-0183m-PA, US-2016-0183n-PA, US-2016-0183o-PA, US-2016-0183p-PA, US-2016-0183q-PA, US-2016-0183r-PA); (ii) in an alert in the MasterCard ADC0099-US-16-1 series and ADC001016-US-16 series (e.g., ADC001016-US-16-1, ADC001016-US-16-2, ADC001016-US-16-3, ADC001016-US-16-4, ADC001016-US-16-5, ADC001016-US-16-6, ADC001016-US-16-7, ADC001016-US-16-8, ADC001016-US-16-9, ADC001016-US-16-10, ADC001016-US-16-11, ADC001016-US-16-12, ADC001016-US-16-13, ADC0099-

Questions? Call 1-888-256-6490 toll free, or visit www.WendysFIDataBreachSettlement.com

US-16-2, ADC0099-US-16-3, ADC0099-US-16-4, ADC0099-US-16-5); (iii) in an alert in the Discover DCA-USA-2016-6670, DCA-USA-2016-5283, and DCA-USA-2016-4698 series; (iv) in an alert or similar document by American Express similar to the foregoing Visa and MasterCard alerts; or (v) in an alert or similar document by JCB similar to the foregoing Visa and MasterCard alerts.

Specifically *excluded* from the Settlement Class is the judge presiding over this matter and any members of her judicial staff, Wendy's, and persons who timely and validly request exclusion from the Settlement Class.

6. Are there exceptions to being included?

If your financial institution excludes itself from the Settlement, it is no longer part of the Settlement Class and will no longer be eligible to receive any of the Settlement benefits. This process of excluding your financial institution is also referred to as "opting out" of the Settlement.

7. I am still not sure if my financial institution is included.

If you are still not sure whether your financial institution is included, you can ask for free help. You can call 1-888-256-6490 or visit www.WendysFIDataBreachSettlement.com for more information. Or you can fill out and return the Claim Form described in Question 10, to see if you qualify.

THE SETTLEMENT BENEFITS

8. What does the settlement provide?

Wendy's will pay \$50 million (\$50,000,000) into a Settlement Fund to compensate Settlement Class Members, pay the Costs of Settlement Administration and any taxes on the Settlement Fund and, subject to the Court's approval, pay the reasonable attorneys' fees, costs, and expenses of the lawyers who represent the Settlement Class. Service Awards of \$7,500 to each of the 15 class representatives that sat for a deposition and \$2,500 to the remaining three class representatives will also be paid out of the Settlement Fund, if the Court approves. In addition, Wendy's has agreed to adopt and/or maintain certain practices related to its data security.

9. How much will my financial institution's payment be?

If your financial institution is eligible to participate in the Settlement and does not "opt out" of the Settlement, it may be eligible for benefits under the Settlement. If your financial institution issued any payment cards (including debit and credit cards) that were identified as having been at risk as a result of the Data Breach in an alert (or similar document) by Visa, MasterCard, Discover, American Express, or JCB, it may be eligible for a payment from the \$50 million Settlement Fund.

All Settlement Class Members who file a valid claim are eligible to get a cash payment from the Settlement Fund per each payment card (including debit and credit cards) that was identified as having been at risk as a result of the Data Breach in an alert (or similar document) by Visa, MasterCard, Discover, American Express, or JCB. You are not required to submit any documentation or evidence of your financial institution's losses to receive a payment. The amount of the cash payment will depend on the total number of eligible payment cards submitted by Settlement Class Members, the Costs of Settlement Administration, taxes paid on the Settlement Fund, and the amount of attorneys' fees, costs, and expenses, and Service Awards approved by the Court. By way of example, if valid claims are submitted for all eligible cards, it is estimated that Settlement Class Members would receive approximately \$2.00 per eligible payment card. If, for example, 40% of eligible payment cards are submitted, then Settlement Class Members would receive approximately \$4.80 per eligible payment card. These are examples. The per-card amount actually paid may be higher or lower.

HOW TO GET A PAYMENT – SUBMITTING A CLAIM FORM

10. How can my financial institution get payment?

To qualify for a payment, you must validly complete and submit a Claim Form, which is included with this Notice. You have three options for completing and submitting a Claim Form. You may complete and submit a Claim Form online no later than September 30, 2019, by visiting the Settlement Website (www.WendysFIDataBreachSettlement.com); (b) complete and sign and upload the Claim Form no later than September 30, 2019, via the secure link that can be found on the Settlement Website; or (c) complete and sign and submit the Claim Form by mail postmarked by **September 30, 2019**, at the following address:

Wendy's Financial Institution Data Breach Settlement
 c/o Analytics Consulting LLC
 P.O. Box 2005
 Chanhassen, MN 55317-2005

The Settlement Administrator will review your claim to determine the amount of your financial institution's payment.

11. When would my financial institution get its payment?

The Court will hold a hearing on November 6, 2019, at 10:00 a.m. to decide whether to approve the Settlement. If the Court approves the Settlement, there may be appeals. It is always uncertain whether these appeals can be resolved and resolving them takes time, perhaps more than a year. Payments to Settlement Class Members will be made after the Settlement is finally approved and any appeals or other required proceedings have been completed as set forth in the Settlement. You may visit www.WendysFIDataBreachSettlement.com for updates on the progress of the Settlement. Please be patient.

12. What is my financial institution giving up to get a payment or remain in the Settlement Class?

Unless you exclude your financial institution from the Settlement, your financial institution cannot sue, or be part of any other lawsuit against, Wendy's, its franchisees, or Defendants' Released Persons (as defined in Settlement) relating to the Data Breach. The specific claims your financial institution is giving up against Wendy's and its franchisees are described in the Settlement. The terms of the release are described in Section IX of the Settlement. Read it carefully. The Settlement is available at www.WendysFIDataBreachSettlement.com.

If you have any questions, you can talk to the law firms listed in Question 16 for free, or you can, of course, talk to your own lawyer if you have questions about what this means.

If your financial institution wants to keep its rights to sue Wendy's and its franchisees based on claims this Settlement resolves, your financial institution must take steps to exclude itself from the Settlement Class (*see* Questions 13-15).

EXCLUDING YOUR FINANCIAL INSTITUTION FROM THE SETTLEMENT

13. How can my financial institution opt out of the settlement?

To exclude your financial institution from the Settlement, or "opt out," you must send a letter by first class postage prepaid U.S. mail that includes the information in the bullet points below. If you fail to include this information, the notice of exclusion will be ineffective and the Settlement Class Member will be bound by the Settlement, including all releases.

- The name of this Litigation (*First Choice Federal Credit Union v. The Wendy's Company*, Case No. 2:16-cv-00506-NBF-MPK (W.D. Pa.));
- Your financial institution's full name, address, and phone number;
- The words "Request for Exclusion" at the top of the document or a statement in the body of the document requesting exclusion from the Settlement Class;
- The name, address, email address, telephone number, position, and signature of the individual who is acting on behalf of the Settlement Class Member; and
- The total number of payment cards issued by your financial institution that were identified as having been at risk as a result of the Data Breach in any alerts (or similar documents) by Visa, MasterCard, Discover, American Express, and JCB.

You must mail via first class postage prepaid U.S. mail the completed above-described letter, postmarked no later than **May 28, 2019**, to each of the following addresses:

Settlement Administrator

Wendy's Financial Institution
 Data Breach Settlement
 c/o Analytics Consulting LLC
 P.O. Box 2005
 Chanhassen, MN 55317-2005

Settlement Class Counsel

Erin Green Comite
 SCOTT+SCOTT ATTORNEYS
 AT LAW LLP
 156 South Main Street
 P.O. Box 192
 Colchester, CT 06415

Defense Counsel

Kristine M. Brown
 ALSTON & BIRD LLP
 One Atlantic Center
 1201 West Peachtree Street
 Atlanta, GA 30309

If you ask to be excluded, your financial institution will not get any payment as part of this Settlement, and you cannot object to this Settlement. Your financial institution will not be legally bound by anything that happens in the Settlement and related proceedings. Your financial institution may be able to sue (or continue to sue) Wendy's and its franchisees in the future. If you object to the Settlement and seek to exclude your financial institution, you will be deemed to have excluded your financial institution.

14. If my financial institution doesn't opt out, can it sue Wendy's or its franchises for the same thing later?

No. Unless you exclude your financial institution from the Settlement, your financial institution gives up any right to sue Wendy's and its franchisees (as further detailed in the Settlement) for the claims that this Settlement resolves. If you have a pending lawsuit, speak to your lawyer in that case immediately. Your financial institution must exclude itself from this Settlement to continue its own lawsuit. Remember, the exclusion deadline is **May 28, 2019**.

15. If my financial institution excludes itself, can it get money from this settlement?

No. If you exclude your financial institution, do not send in a Claim Form asking for a payment.

THE LAWYERS AND FINANCIAL INSTITUTIONS REPRESENTING YOU

16. Does my financial institution have a lawyer in the case?

Yes. The Court appointed to represent your financial institution and other members of the Settlement Class the following law firms: Carlson Lynch Sweet Kilpela & Carpenter, LLP, in Pittsburgh, Pennsylvania; and Scott+Scott Attorneys at Law, LLP, in Colchester, Connecticut. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

17. How will the lawyers and financial institutions representing the Settlement Class be paid?

In 2016, the Court appointed a legal team of law firms from around the country to represent Plaintiffs. None of the lawyers has yet received any payment for their time or expenses. The lawyers intend to ask the Court to approve an award of 30% of the gross Settlement Fund in attorneys' fees, including any interest earned thereon, to compensate them for their time and the financial risk that they undertook when they agreed to represent the Plaintiffs on a contingent basis, which means that they would receive a fee only if the lawsuits were successful. In addition, the lawyers intend to ask the Court to reimburse them for all of the expenses they have incurred. Wendy's has agreed not to object to the lawyers' motion to the Court to seek a reasonable attorneys' fee and reimbursement of expenses and these amounts will be paid out of the Settlement Fund.

The Settlement Class is represented by 18 financial institutions from 16 states. In addition to the benefits that the financial institution class representatives will receive as members of the Settlement Class and subject to the approval of the Court, Wendy's has agreed to pay Service Awards of \$7,500 to each of the fifteen Settlement Class Representatives that sat for a deposition and \$2,500 to the remaining three Settlement Class Representatives for the efforts that they have expended on behalf of the Settlement Class. The amount of the Service Awards approved by the Court will be paid from the Settlement Fund.

The Court will determine whether to approve the amount of fees and expenses requested by Plaintiffs' lawyers and the proposed Service Awards to the Settlement Class Representatives at the Final Approval Hearing scheduled for November 6, 2019 at 10:00 a.m. Plaintiffs' lawyers will file an application for fees, expenses, and Service Awards no later than October 7, 2019. The application will be available on the Settlement Website www.WendysFIDataBreachSettlement.com or you can request a copy by contacting the Settlement Administrator (see Question 23).

OBJECTING TO THE SETTLEMENT

18. How does my financial institution tell the Court that it does not like the settlement?

If your financial institution is a Settlement Class Member, you can object to the Settlement if you do not think it is fair, reasonable, or adequate. You can give reasons why you think the Court should not approve it. The Court will consider your views. If you object to the Settlement and seek to exclude your financial institution, your financial institution will be deemed to have excluded itself.

Your objection must be in writing, shall not exceed twenty-five (25) pages, and must include:

- The name of this Litigation (*First Choice Federal Credit Union v. The Wendy's Company*, Case No. 2:16-cv-00506-NBF-MPK (W.D. Pa.));
- Your financial institution's full name, and the full name, address, email address, and telephone number of the person acting on its behalf;
- An explanation of the basis for why your financial institution is a Settlement Class Member;
- Whether the objection applies only to your financial institution, to a specific subset of the Settlement Class, or to the entire Settlement Class;
- All grounds for the objection stated with specificity, accompanied by any legal support for the objection;
- A description of all evidence to be presented at the Final Approval Hearing in support of the objection, including a list of any witnesses, a summary of the expected testimony from each witness, and a copy of any documents or other non-oral material to be presented;
- *All other information specified in the Preliminary Approval Order* (available on the Settlement Website, www.WendysFIDataBreachSettlement.com), including but not limited to information relating to any objections you or your counsel have filed in other class action litigation; and
- Your signature on the written objection.

Any objection must be either filed electronically with the Court or mailed to the Clerk of the Court, Class Counsel, and Wendy's counsel at the addresses set forth below. The objection must be electronically filed, or if mailed postmarked, no later than **May 28, 2019**.

Court

Clerk of the Court
USDC, Western District of
Pennsylvania
Joseph F. Weis, Jr.
U.S. Courthouse
700 Grant Street
Pittsburgh, PA 15219

Settlement Class Counsel

Gary F. Lynch
CARLSON LYNCH SWEET KILPELA
& CARPENTER, LLP
1133 Penn Avenue, 5th Floor
Pittsburgh, PA 15222

Erin Green Comite
SCOTT+SCOTT ATTORNEYS
AT LAW LLP
156 South Main Street
P.O. Box 192
Colchester, CT 06415

Defense Counsel

Kristine M. Brown
ALSTON & BIRD LLP
One Atlantic Center
1201 West Peachtree Street
Atlanta, GA 30309

In addition, any Settlement Class Member that objects to the proposed Settlement must make itself available to be deposed regarding the grounds for its objection and must provide along with its objection the dates when the objector will be available to be deposed during the period from when the objection is filed through the date five days before the Final Approval Hearing.

19. What is the difference between objecting and excluding/opting out?

Objecting is simply telling the Court that you don't like something about the Settlement. You can object to the benefits provided by the Settlement or other terms of the Settlement only if your financial institution stays in the Settlement Class. Excluding your financial institution or "opting out" is telling the Court that you don't want to be included in the Settlement Class. If your financial institution excludes itself, you have no basis to object to the Settlement and related releases because the Settlement no longer affects you.

THE COURT'S FINAL APPROVAL HEARING

20. When and where will the Court decide whether to approve the settlement?

The Court will hold a Final Approval Hearing at November 6, 2019 at 10:00 a.m., in Courtroom 9C before Magistrate Judge Maureen P. Kelly of the United States District Court for the Western District of Pennsylvania, Joseph F. Weis, Jr.

U.S. Courthouse, 700 Grant Street, Pittsburgh, PA 15219. This hearing date and time may be moved. Please refer to the Settlement Website (www.WendysFIDataBreachSettlement.com) for notice of any changes.

By no later than October 7, 2019, Class Counsel shall file a motion for final approval of the Settlement and a motion for attorneys' fees, costs, and expenses and for Service Awards. Objectors, if any, shall file any response to Class Counsel's motions no later than October 18, 2019. By no later than October 25, 2019, responses shall be filed, if any, to any filings by objectors, and any replies in support of final approval of the Settlement and/or Class Counsel's application for attorneys' fees, costs, and expenses and for Service Awards shall be filed.

At the Final Approval Hearing, the Court will consider, among other things, whether the Settlement is fair, reasonable, and adequate; how much Plaintiffs' lawyers will receive as attorneys' fees and expenses; and whether to approve Service Awards to the Settlement Class Representatives. If there are objections, the Court will consider them. The Court will listen to people at the hearing who file in advance a timely notice of their intention to appear (*see* Question 18). At or after the Final Approval Hearing, the Court will decide whether to approve the Settlement. There is no deadline by which the Court must make its decision.

21. Does my financial institution have to attend the hearing?

No. Class Counsel will answer questions the Court may have. You are welcome, however, to come at your own expense. If you submit an objection, you do not have to come to the Court to talk about it. As long as you submitted your objection timely and in accordance with the requirements for objecting set out of the Settlement (*see* Question 18), the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

IF YOU DO NOTHING

22. What happens if my financial institution does nothing at all?

If your financial institution is a Settlement Class Member and does nothing, it will remain a part of the Settlement Class but will not get any payments from the Settlement. And, unless your financial institution excludes itself, it will not be able to sue Wendy's or its franchisees about the claims being resolved through this Settlement ever again. See the Settlement for more details about the releases.

GETTING MORE INFORMATION

23. How do I get more information?

This notice summarizes the Settlement. More details are in the Settlement itself. You can get a copy of the Settlement at www.WendysFIDataBreachSettlement.com or from the Settlement Administrator by calling toll-free 1-888-256-6490.

Please do not contact the Court with questions about the Settlement.

Chanhassen, MN 55317-2005

CERTIFICATION OF PAYMENT CARDS

Please complete all parts of the question below:

Is your financial institution the issuer of one or more payment cards that were identified in any of the categories of alerts or similar documents below? (Check All Applicable Boxes Below.)

If you check "YES" for any category of alert(s) (or similar documents), indicate how many payment card accounts your financial institution issued that were identified in the referenced alert(s) or similar documents. For purposes of completing this form, please note that a payment card number can have only one corresponding payment card account, even if your financial institution issued multiple payment cards bearing the card number.

(a) Visa alert(s) in the US-2016-0183-PA series Number of Issued Accounts Identified in These Alerts:	<input type="checkbox"/> YES <input type="checkbox"/> NO <div style="border: 1px solid black; width: 100px; height: 20px; margin-top: 5px;"></div>
(b) MasterCard alert(s) in the ADC0099-US-16 series or ADC001016-US-16 series Number of Issued Accounts Identified in These Alerts:	<input type="checkbox"/> YES <input type="checkbox"/> NO <div style="border: 1px solid black; width: 100px; height: 20px; margin-top: 5px;"></div>
(c) Discover alert(s) in the DCA-USA-2016-6670, DCA-USA-2016-5283, or DCA-USA-2016-4698 series Number of Issued Accounts Identified in These Alerts:	<input type="checkbox"/> YES <input type="checkbox"/> NO <div style="border: 1px solid black; width: 100px; height: 20px; margin-top: 5px;"></div>
(d) American Express alert(s) or similar documents relating to the Wendy's data breach Number of Issued Accounts Identified in These Alerts/Documents:	<input type="checkbox"/> YES <input type="checkbox"/> NO <div style="border: 1px solid black; width: 100px; height: 20px; margin-top: 5px;"></div>
(e) JCB alert(s) or similar documents relating to the Wendy's data breach Number of Issued Accounts Identified in These Alerts/Documents:	<input type="checkbox"/> YES <input type="checkbox"/> NO <div style="border: 1px solid black; width: 100px; height: 20px; margin-top: 5px;"></div>

Your financial institution is not a Settlement Class Member and you should not submit this claim form unless you are able to answer YES to at least one of the categories above.

SIGN CLAIM FORM

By submitting this claim form, the above-named Settlement Class Member certifies that it is eligible to make a claim in this settlement and that the information provided in this claim form is true and correct. The above-named Settlement Class Member understands that this claim may be subject to audit, verification, and Court review.

Signature of Duly Authorized Representative of Settlement Class Member

M M D D Y Y Y Y

Date Signed

Print Name

Title

CLAIM SUBMISSION REMINDERS

- You may submit your claim by mail or through the website at www.WendysFIDataBreachSettlement.com.
- Please keep a copy of this claim form if submitting by mail.
- Claims must be submitted through the website by **September 30, 2019**, or mailed so they are postmarked, by **September 30, 2019**.

EXHIBIT C

Legal Notice – Wendy's Financial Institution Data Breach Settlement

ON MARCH 28, 2019

LEGAL - SPONSORED CONTENT

LEGAL NOTICE

If your financial institution issued one or more payment cards that was identified as having been at risk as a result of the data breach that Wendy's announced in 2016, it could get a payment from a class action settlement.

A federal court authorized this notice. This is not a solicitation from a lawyer.

A settlement of lawsuits against The Wendy's Company, Wendy's Restaurants, LLC, and Wendy's International, LLC ("Wendy's") has been proposed in which Wendy's has agreed to pay \$50 million to resolve claims brought by financial institutions and associations arising from third-party criminal cyberattacks of certain of Wendy's independently owned and operated franchisee restaurants involving malware variants targeting customers' payment card information that Wendy's reported in 2016 (the "Data Breach"). If your financial institution ("you") qualifies, you may send in a claim form to get benefits, or you can exclude yourself from the Settlement, or object to it.

NEWSBYTES

- SEP 25 In Landmark Vote, House Passes ABA-Backed SAFE Banking Act
- SEP 26 Palming (GSE) Mortgage Fall
- SEP 25 ABA: Fed Must Prioritize Interoperability in Development of FedNow
- SEP 24 FinCEN's Blanco Warns on Account Takeover Risk from Fintech Aggregators

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Financial Statement Report™
A complete picture of risk in a single click.
LEARN MORE

SPONSORED CONTENT

Legal Notice – Wendy's Financial Institution Data Breach Settlement

https://bankingjournal.aba.com/2019/03/legal-notice-wendys-financial-institution-data-breach-settleme...

The United States District Court for the Western District of Pennsylvania authorized this notice. Before any money is paid, the Court will have a hearing to decide whether to approve the Settlement.

Who Is Included?

You are a member of the Settlement Class and affected by the Settlement if:

- You are a financial institution, bank, credit union, or other entity in the United States (including its Territories and the District of Columbia); and
- You issued one or more payment cards (including debit and credit cards) that was identified as having been at risk as a result of the Data Breach in an alert or similar document by Visa, MasterCard, Discover, American Express, or JCB. (See the Settlement or Settlement Website for more details as to the payment cards that are included.)

What Is This Case About?

The lawsuits, which have been consolidated in *First Choice Federal Credit Union v. The Wendy's Company*, Case No. 2:16-cv-00506-NBF-MPK (W.D. Pa.), were filed by financial institutions and associations and allege that Wendy's is legally responsible for the Data Breach. The lawsuits assert claims for negligence, negligence per se, violation of the Ohio Deceptive Trade Practices Act, as well as for declaratory and injunctive relief. The lawsuits seek, among other relief, to recover damages for the expense of payment card reissuance, amounts paid to cover fraudulent payment card charges, and other costs allegedly incurred responding to the Data Breach. Wendy's denies any wrongdoing.

What Does the Settlement Provide?

Wendy's has agreed to pay \$50 million into a Settlement Fund out of which the Settlement Administrator will make payments to eligible Settlement Class Members. A Settlement Class Member who submits a valid claim will receive a cash payment for each eligible payment card it issued. The amount of the cash payment will depend on the total number of eligible payment cards submitted by Settlement Class Members, the Costs of Settlement Administration, taxes paid on the Settlement Fund, and the amount of attorneys' fees, costs, and expenses, and Service Awards approved by the Court. By way of example, if valid claims are submitted for all eligible cards, it is estimated that Settlement Class Members would receive approximately

\$2.00 per eligible payment card. If, for example, 40% of eligible payment cards are submitted, then Settlement Class Members would receive approximately \$4.80 per eligible payment card. These are examples. The per-card amount actually paid may be higher or lower.

Complete Kaufman Hall's CFO Outlook Survey and Enjoy Coffee on Us

AUGUST 30, 2019

Fraud 2020: Lenders Beware (and What Banks Can Do Now)

AUGUST 30, 2019

Forging a More Powerful Customer Experience

AUGUST 30, 2019

Maximizing Digital Security: 5 Things Community Banks Need to Do Now

PODCAST

- SEP 25 Podcast: The Risks of Delaying CECL for Some Banks but Not Others
- SEP 18 Podcast: Compliance's Role in Innovation and Change Management
- SEP 11 Podcast: Surprising Places to Understand Financial Risk
- SEP 04 Podcast: Avoiding the 'Rhetoric of Sameness' in Marketing

How do you deter insider threats to your bank?
Be prepared for bank theft and fraud from within.
Download whitepaper

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Legal Notice - Wendy's Financial

https://bankingjournal.aba.com/2019/03/legal-notice-wendys-financial-institution-data-breach-settleme...

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Members would receive approximately \$4.80 per eligible payment card. These are examples. The per-card amount actually paid may be higher or lower.

The Costs of Settlement Administration and taxes on the Settlement Fund will be paid from the Settlement Fund. Any attorneys' fees, costs, and expenses, and Service Award payments that are approved by the Court also will be paid from the Settlement Fund.

How Do You Ask for a Payment?

A detailed notice and Claim Form package contains everything you need. Just call the number or visit the website below to get one. To qualify for a payment, you must send in a Claim Form, which can be completed online or submitted electronically or by mail. Claim Forms must be submitted online or electronically, and if mailed postmarked, by **September 30, 2019**.

What Are Your Other Options?

If you do not want to be legally bound by the Settlement, you must exclude yourself by **May 28, 2019**, or you will not be able to sue, or continue to sue, Wendy's, its franchisees, or any other Defendants' Released Persons (as defined in the Settlement) for any of the claims resolved by the Settlement. To exclude yourself, you must provide all required information. If you exclude yourself, you cannot get money from this Settlement. If you stay in the Settlement Class but wish to object, you must do so by **May 28, 2019**. Details for excluding yourself or objecting to the Settlement can be found in the Settlement and on the Settlement Website.

The Court will hold a hearing in this case on **November 6, 2019 at 10:00 a.m.**, to consider whether to approve the Settlement. At the hearing, the Court will also consider a request by the lawyers representing all Settlement Class Members for attorneys' fees, costs, and expenses for investigating the facts, litigating the case, and negotiating the Settlement, as well as for Service Awards to the Settlement Class Representatives for their time participating in the case. You may ask to appear at the hearing, but you do not have to.

Want More Information?

For more information, call toll free at 1-888-256-6490 or visit the website at www.WendysFDDataBreachSettlement.com.

Data breaches Sponsored content






EXHIBIT D

Wendy's Data Breach Settlement
c/o Analytics Consulting LLC
Settlement Administrator
P.O. Box 2005
Chanhassen, MN 55317-2005

Postal Service: Please Do Not Mark Barcode

WDB1234567890 - Claim Number 1111111



SAMPLE BANK
123 MAIN ST
STE 100
ANYTOWN, ST 12345

**WENDY'S FINANCIAL INSTITUTION DATA BREACH SETTLEMENT:
REMINDER OF DEADLINE TO SUBMIT CLAIM FORM BY
SEPTEMBER 30, 2019.**

On March 28, 2019 we sent you a Class Notice and Claim Form re: *First Choice Federal Credit Union v. The Wendy's Company*, Case No. 2:16-cv-00506-NBF-MPK (W.D. Pa.).

Our records show you have not submitted a Claim Form which is required if your Institution wishes to seek a cash payment should the Settlement become final. If you wish to make a claim in this Settlement, you must submit your Claim Form so that it is postmarked or received **no later than September 30, 2019**.

If you have not received your Claim Form or have misplaced it, a copy may be obtained by calling the Claims Administrator at 1-888-256-6490; or, you may submit a Claim Form via the Settlement Website www.WendysFIDataBreachSettlement.com.

More information including copies of the full Class Notice and Claim Form, other Settlement documents and details about the Settlement are available at www.WendysFIDataBreachSettlement.com.

EXHIBIT E



WDB00005F5C2E



As of February 19, 2019, Central National Bank is now Stride Bank.

May 13, 2019

Settlement Administrator
Wendy's Financial Institution
Data Breach Settlement
c/o Analytics Consulting LLC
PO Box 2005
Chanhassen, MN 55317-2005

REQUEST FOR EXCLUSION

RE: Litigation-(First Choice Federal Credit Union v. The Wendy's Company,
Case No. 2:16-cv-00506-NBF-MPK (W.D. Pa));

To Whom It May Concern:

Please accept this as Stride Bank's request to be excluded in the class action lawsuit referenced above; Stride Bank, N.A. formerly Central National Bank & Trust Co. of Enid AKA CNB Enid, 324 W Broadway Ave, Enid, OK 73701, Phone No. 580.233.3535.

The approximate number of cards identified in this breach is 244.

If you have questions, please contact Teresa Coleman, Vice President Risk Management, 324 W Broadway, Enid OK 73701, tcoleman@stridebank.com.

Sincerely,

A handwritten signature in cursive script that reads "Teresa Coleman".

Teresa Coleman
Vice President
Manager, Risk Management Dept.

Stride
BANK

P.O. Box 3448
Enid, OK 73702

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OKLA CITY 73000 05-16-19

Settlement Administrator
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c/o Analytics Consulting LLC
PO Box 2005
Chanhasen, MN 55317-2005

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